

HEARING DATE AND TIME: November 30, 2011 at 10:00 a.m. (Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	
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LEHMAN BROTHERS HOLDINGS INC., et al.	:	Case No. 08 – 13555 (JMP)
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Debtors.	:	
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**RESPONSE OF BANCO ITAU EUROPA LUXEMBOURG S.A. TO
DEBTORS' TWO HUNDRED FIFTEENTH OMNIBUS OBJECTION TO
DISALLOW AND EXPUNGE CERTAIN FILED PROOFS OF CLAIM**

TO THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

Banco Itau Europa Luxembourg S.A. ("Itau"), by and through its undersigned counsel, submits this response ("Response") to the Debtors' Two Hundred Fifteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [Docket No. 20104], dated September 16, 2011 (the "Objection"). In support of its Response, Itau respectfully states as follows:

Background

1. Beginning on September 15, 2008 and periodically thereafter, Lehman Brothers Holdings Inc. ("LBHI") and certain of its affiliates (collectively, the "Debtors")

commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

2. On July 2, 2009, the Bankruptcy Court entered the Order Establishing the Deadline for Filing Proofs of Claim, Approving the Form and Manner of Notice Thereof and Approving the Proof of Claim Form [Docket No. 4271] (the “Bar Date Order”).

3. Pursuant to the Bar Date Order, on October 30, 2009, Itau filed (i) a proof of claim (Proof of Claim Number 57373) against LBHI in the amount of \$1,980,000 (the “Lehman V Proof of Claim”) on account of LBHI’s guarantee of the Fixed Rate Enhanced Capital Advantage Preferred Securities, issued by Lehman Brothers UK Capital Funding V LP (“Lehman UK Capital V”), with ISIN XS0301813522 (the “Lehman V Preferred Securities”), and (ii) a proof of claim (Proof of Claim Number 57539) against LBHI in the amount of \$170,412 (the “Lehman IV Original Proof of Claim”) on account of LBHI’s guarantee of the Fixed Rate Enhanced Capital Advantage Preferred Securities issued by Lehman Brothers UK Capital Funding IV LP (“Lehman UK Capital IV”), with ISIN XS0282978666 (the “Lehman IV Preferred Securities” and together with the Lehman V Preferred Securities, the “Preferred Securities”). Itau amended the Lehman IV Original Proof of Claim (Proof of Claim Number 67497) on May 19, 2011 (the “Lehman IV Proof of Claim” and together with the Lehman V Proof of Claim, the “Proofs of Claim”).

4. The Preferred Securities were included on the list of Lehman Program Securities (as defined in the Bar Date Order) which the Debtors published on their restructuring

website (the “Lehman Program Securities List”) pursuant to the Bar Date Order. The Lehman Program Securities List provides, in the “Description” column, (i) “Fixed Rate Enhanced Capital Advantage Preferred Securities” with respect to the Lehman V Preferred Security, and (ii) “Company Guaranty” with respect to the Lehman IV Preferred Security. A copy of the relevant portion of the Lehman Program Securities List is attached hereto as Exhibit A.

5. On September 16, 2011, the Debtors filed the Objection seeking to disallow and expunge the Proofs of Claim. The Debtors argue that pursuant to the terms of LBHI’s subordinated guarantee, LBHI has no liability on account of the Proofs of Claim. *See* Objection at ¶ 3. The Debtors maintain in the alternative that, even if liability exists, Itau’s claims should be subordinated in accordance with the terms of the guarantee and should therefore be reclassified as equity. *Id.*

Argument

6. Section 502(b) of the Bankruptcy Code provides that claims against the debtor will be determined “as of the date of the filing of the petition.” 11 U.S.C. § 502(b).

7. Pursuant to Section 502(b) of the Bankruptcy Code, Itau’s guarantee claims against LBHI are determined as of September 15, 2008, and not determined as of the subsequent dissolutions of Lehman UK Capital IV and Lehman UK Capital V, which dissolutions, upon information and belief, the Debtors caused. Lehman UK Capital IV and Lehman UK Capital V were dissolved on June 22, 2010 and May 17, 2011, respectively, so the LBHI guarantee of the Preferred Securities was valid and enforceable as of September 15, 2008. Therefore, on September 15, 2008, Itau had valid claims against LBHI on account of LBHI’s guarantee of the Preferred Securities.

8. Moreover, the Debtors included the Preferred Securities on the Lehman

Program Securities List. If the Debtors had wanted to reclassify claims in connection with the Preferred Securities as equity claims, then the Debtors should not have included these Preferred Securities on that list.

9. To the extent the Bankruptcy Court does not overrule the Objection, Itau reserves the right to seek discovery and to request a full evidentiary hearing pursuant to Bankruptcy Rule 9014(e) and Rule 9014-2 of the Local Rules of Bankruptcy Procedure to determine the proper amount of Itau's claims, and the reasons why the Debtors initially characterized the Preferred Securities as securities giving rise to cognizable claims.

WHEREFORE, Itau respectfully requests that the Bankruptcy Court (i) overrule the Objection as it pertains to Itau's Proofs of Claim, and (ii) grant Itau such further relief as the Bankruptcy Court deems just.

Dated: New York, New York
November 11, 2011

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